

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

No. CR 05-00611 WHA

Plaintiff,

v.

**ORDER GRANTING MOTION  
FOR CLARIFICATION;  
QUASHING SUBPOENAS; AND  
VACATING HEARING**

DALE SCOTT HEINEMAN, KURT F.  
JOHNSON, THE DOREAN GROUP,  
WILLIAM JULIAN; FARREL J.  
LECOMPTE, JR., SARA J. MAGOON, and  
CHARLES DEWEY TOBIAS,

Defendants.

**1. MOTION FOR CLARIFICATION.**

By order dated July 21, 2006, this Court stated that “[t]he amended cross-complaint filed by defendants Dale Scott Heineman and Kurt F. Johnson is a nullity.” The “amended cross-complaint” named, among many other entities, Chase Manhattan Mortgage Corporation as “3rd-party defendants.” Chase Home Finance LLC, successor by merger to Chase Manhattan Mortgage Corporation, has moved for clarification of the Court’s July 21 order. Chase is not a party to this criminal case. Chase requests that the “amended cross-complaint” be declared a nullity as to it. This order makes clear that the amended cross-complaint is a nullity as to any and all persons and entities named as “3rd-party defendants” in the “amended cross-complaint.” None of the named parties need respond to that document.

1                   **2. SUBPOENAS AND NOTICES OF “PARAMOUNT CLAIM.”**

2                   Defendants Heineman and Johnson also filed numerous subpoenas addressed to:  
3 approximately 22 lenders; the undersigned; several other judges of this Court; the clerk of this  
4 Court; the United States Attorney and Assistant United States Attorneys for the Northern  
5 District of California; three Assistant Federal Public Defenders; counsels for Heineman and  
6 Johnson’s co-defendants; FBI agents; Heineman and Johnson’s co-defendants; and Heineman  
7 and Johnson themselves. The subpoenas request production of:

8                   Certified copy of a U.C.C. 11 search; certified copy of U.C.C.  
9 Financing Statement; contract supporting your claim; any and all  
10 contracts authorizing you to represent and/or accept claims on  
11 behalf of the defendants. An unconditional tender is offered for  
12 expenses related to performance by and through our exemption at  
13 H.J.R. 192 June 5, 1933, Public Law 73-10 and Public Policy.

14                   Heineman and Johnson also filed and served numerous documents entitled “Notice of  
15 Paramount Claim, Statement of Interest in Admiralty, Demand to Show Cause With Proof of  
16 Defect in Superior Claim, Supporting Affidavit, Subpoena Duces Tecum by Process.” All of  
17 them follow a an identical format. The “notice” directed at Chase, for example, reads:

18                   You, CHASE MANHATTAN MORTGAGE CORPORATION,  
19 have been introduced as a claimant against DALE SCOTT  
20 HEINEMAN<sup>®TM</sup> and KURT F. JOHNSON<sup>®TM</sup> in the above entitled  
21 action. Real Parties in Interest put forth their claims herein that  
22 they believe to be paramount (see Exhibit 1 & 2). You have ten  
23 (10) days in which to provide <sup>1</sup>verification of your claim, its  
24 priority, or in the alternative provide a certified U.C.C. 11 search  
25 demonstrating your creditor position.

26                   The production of any and/or all such evidence is to be submitted  
27 directly to the clerk of the court. Failure to do so will be a  
28 confession that no claim exists and a stipulation among the parties  
of our status as the paramount creditors. You are about to be  
named as a 3rd-party defendant in this action and this is your  
opportunity to exhaust your administrative remedy in admiralty to  
mitigate the substantial damages caused by violations of our  
creditor rights. You will be exempted from being named if you  
timely return the attached notice (Exhibit 3) to express your non-  
claim or inferior claim as a response.

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28                   <sup>1</sup> Confirmation of correctness, truth, or authenticity by affidavit, oath or deposition. Blacks 6th  
Edition.

1 Federal Rule of Criminal Procedure 17(c) requires a showing of relevancy,  
2 admissibility, and specificity to support the issuance of a subpoena *duces tecum*. *United States*  
3 *v. Reed*, 726 F.2d 570, 577 (9th Cir. 1984). A court is justified in quashing a subpoena *duces*  
4 *tecum* if production would be immaterial, unreasonable, oppressive and irrelevant. *United*  
5 *States v. Komisaruk*, 885 F.2d 490, 495 (9th Cir. 1989). Defendants have in no way  
6 demonstrated to the Court the “relevancy, admissibility, and specificity” of the documents they  
7 request. The descriptions of the documents sought by defendants are not only immaterial and  
8 irrelevant — they are incomprehensible.

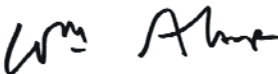
9 In addition, the government notes that “to the extent these subpoenas to the lenders are  
10 requests to review certain loan documents, . . . [the] loan documents previously obtained by the  
11 government from lenders have been provided as discovery in this action” (Government’s July  
12 28 Response at 4). Thus, according to the government, to the extent that the proposed  
13 subpoenas request loan documents, defendants may already have those documents in their  
14 possession. This order rests on the government’s representation that copies of the relevant loan  
15 documents have been produced to defendants in discovery.

16 Rule 17(c) was “not intended as a discovery device, or to allow a blind fishing  
17 expedition seeking unknown evidence.” *United States v. MacKey*, 647 F.2d 898, 901 (9th Cir.  
18 1981) (citation omitted). The proposed subpoenas by defendants Heineman and Johnson are  
19 vague and meaningless. Accordingly, while the Court recognizes defendants’ right to seek the  
20 issuance of subpoenas under Rule 17(c), the subpoenas defendants have filed thus far are  
21 irrelevant and immaterial. Accordingly, they are **QUASHED**. The “Notice[s] of Paramount  
22 Claim” are a nullity as to all parties to whom they are directed.

23 The hearing currently scheduled for November 21, 2006, on Chase’s motion is  
24 **VACATED**.

25 **IT IS SO ORDERED.**

26  
27 Dated: October 27, 2006

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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE